(1)

95-1703

NO. _____

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

MICHAEL R. WOODS,

Petitioner,

v.

ALAMEDA COUNTY SUPERIOR COURT,

DENNIS MCDONALD,

Respondents.

Petition for Writ of Certiorari
to the Court of Appeal of the State of
California, First Appellate District

PETITION FOR WRIT OF CERTIORARI

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7 pp

QUESTIONS PRESENTED FOR REVIEW

1. Does the Court acquire jurisdiction over the defendant if he is servied with a "functus officio" summons?

   A. Is the defendant allowed to file a motion to quash service when he is served a copy of a "functus officio" summons that is "void"?

2. Does the defendant have immunity from being servied again, while their is pending a motion to quash service or while he is attending a hearing?

3. Was the state court without jurisdiction as to the events or omissions giving rise to the claims that occurred on property purchase by the United States of America, which has "exclusive federal jurisdiction" under Article I, Section 8, clause 17?

QUESTIONS PRESENTED FOR REVIEW

a. If, the state court is without jurisdiction as to the events or ommissions giving rise to the claims that occured on federal property being a military reservation, which the federal court has "exclusive federal jurisdiction", then does the complaint state a cause of action supporting the issuance of a summons with a 5-day response time or a judgment?

b. If, federal district court has "exclusive federal jurisdiction" under Article 1, Section 8, clause 17, was the state court's absence of power to hear or determine the case an absence of authority over the subject matter or the parties as the complaint fails to state a cause of aciton, and if not, does it support the issuance with a five-day response time or a judgment?

QUESTIONS PRESENTED FOR REVIEW

c. If, United States of America has "Exclusive Federal Jurisdiction" under Article I, Section 8, clause 17, did the federal government relinguish its "Exclusive Federal Jurisdiction" over its property by granting a revocable license (aka Quitclaim Deed) at any upon demand by the federal government, and which includes reservations, restrictions, conditions, and further, that the federal government shall at all times have the right to use not less than 25 per centum of capacity of the airport?

d. Should the service of 5-day summons be quashed where the complaints to state a cause of action in unlawful detainer?

e. Should the availability of a successfull demurrer preclude the quashing of service of defective summons?

QUESTIONS PRESENTED FOR REVIEW

f. Are personal jurisdiction and due process rights a disretionary matter or are not discretionary?

4. If, the plaintiff is not the landlord or property owner does the complaint fail to state a cause of action?

a. If, the complaint fails to state a cause of action for an unlawful detainer action, does it support the issuance of a summons with a 5-day response time?

b. Does the plaintiff have standing to sue in an unlawful detainer action were he is not the landlord of the commercial site lease or the property owner, does it support the issuance of a summons with a 5-day response time?

LIST OF PARTIES

The parties in the court below are set forth in the caption. The petitioner is Michael R. Wood, (erroneously sued as Michael R. Woods), and is the defendant in the trial court. The Alameda County Superior Court of the State of California was the Respondent, and Dennis McDonald in the lower court was the Real Party In Interest and plaintiff. Judge Ronald Sabraw was the presiding judge for the Superior Court who denied the Writ of Mandate under Code of Civil Procedure, Section 418.10(c) directing the Municipal Court to quash service of summons for lack of jurisdiction of the court over petitioner, and Judge Leo Dorado denied the Motion to Quash Service of Summons in the Municipal Court of Alameda County, San Leandro-Hayward Judicial District, in the State of California.

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No._____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

MICHAEL R. WOODS,
Petitioner,
vs.

ALAMEDA COUNTY SUPERIOR COURT,
DENNIS MCDONALD,
Respondents.

Petition for Writ of Certiorari
to the Court of Appeal of the State of
California, First Appellate District

PETITION FOR WRIT OF CERTIORARI

The petitioner Michael R. Wood respectfully prays that a writ of certiorari issue to review the decision of the Court of Appeal of the State of California, First Appellate District, entered in this proceeding on Nov. 14, 1995 (Appendix A2)(hereafter "A__"), and a petition for review that was denied by the Calif. Sup. Ct. on Jan. 23, 1996 (A1).

The petition draws into question of "exclusive federal jurisdiction" over federal land under Art. I, Sec. 8, cl. 17; Art. 4, Sec. 3, cl. 2; Art. 6, cl. 2; Surplus Property Act of 1944; and War Assets Administration (hereinafter WAA), Reg. 16 - Airport Property (CFR, 1946 Supp., §§8316.10(a), (b)(1); §8316.21((a), (1)), being drawn into question, and neither the United States or a federal department is a party (28 U.S.C. §2403(a)).

OPINIONS BELOW

The judgment, decisions, and orders, of the lower courts are not reported, and appear in the Appendix hereto.

The petitioner made a special appearance and filed a motion to quash summons in the trial court. Judge Dorado denied petitioner's motion to quash summons, filed on Sept. 1, 1995. (A7-8).

The petitioner filed a writ of mandate under Code of Civil Procedure §418.10(c) (hereinafter "CCP"). Judge Sabraw denied the writ of mandate, and order was filed on Oct. 20, 1995 (A5-6), and judgment on Oct. 27, 1995. (A3-4).

The Court of Appeal, denied the Writ of

Mandate under CCP §418.10(c) on Nov. 14, 1995. (A2), and the Calif. Sup. Ct., denied the Pet. for Review on Jan. 23, 1996. (A1).

STATEMENT OF JURISDICTIONAL GROUNDS

The judgment of the Court of Appeal, filed on Nov. 14, 1995 (A-2), and Calif. Sup. Ct. denied on Jan. 23, 1996, a Writ of Review. (A-1)

This Petition for Writ of Certiorari was filed within ninety days on Apr. 22, 1996. This Court's jurisdiction is invoked under 28 U.S.C. Section 1257(a).

CONSTITUTIONAL, STATUTES, AND REGULATIONS INVOLVED

The following constitutional, statutes, and regulations are as follows:

A. Art. I, Sec. 8, cl. 17 (Legislative Department, Seat of Government) of the U.S. Const. (A-9).

B. Art. IV, Sec. 3, cl. 2 (States Relations, Property of United States) of the U.S. Const (A-9).

C. Art. VI, cl. 2 (National Supremacy) of the U.S. Const. (A-10).

D. Fifth Amendment of the Const. (Rights of Person - Due Process) (A-10).

E. Fourteenth Amendment, Section 1 (Rights Guartanted - Due Process and Equal Protection) (A-10).

F. Surplus Property Act of 1944, section 26(c) - Civil Remedies (A-11); and War Assets Admin., Reg. 16 - Airports (CFR, 1946, Supp., §§8316.10(a), (b)(1); §§8316.21(a), (1)) (A11-12).

CALIFORNIA STATUTES INVOLVED

Calif. Code of Civil Procedure, Section 367 (Real Party in interest) (A-13);

Calif. Code of Civil Procedure, Sections 418.10(a), (b), and (c) (A14-15);

Calif. Code of Civil Procedure, Section 1161(5) (A-15).

STATEMENT OF THE CASE

This petition for writ of certiorari is based upon important federal question that conflicts with the decision of another state court, or a U.S. Court of Appeals. The California state court has decided an important question of federal law that has not been, but should be settled by this Court, and conflicts with relevant decisions of this Court (Sup. Ct. R. 10(b) and (c)). The issues under the 5th and 14th Amend. is apparent. The issue of

federal preemption, and denial of "exclusive federal jurisdiction" over the federal land (a military reservation) is also apparent under Art.I, Sec. 8, cl. 17; Surplus Property Act of 1944, and the WAA, Reg. 16 - Airports (CFR, 1946 Supp. §§8316.10(a), (b)(1); §§8316.21(a), (1)) (All-12). The facts giving rise to this controversy are undisputed. This petition involves intervention by U.S. Sup. Ct. as "exclusive federal jurisdiction" over all the lands acquired by the U.S. is at issue that was transferred under the Surplus Property Act of 1944, and being transferred under "reservations, restrictions and conditions, and with a reverter" by WAA under Reg. No. 16 - Airports, and "retained on a stand-by status for postwar use as an airfield"; and that the license (aka Quitclaim Deed) "would be revokable at will by the government upon demand. (See, United States v. 93,970 Acres of Land et al., 360 U.S. 328 (1958), and "federal law rule unless Congress choose to make state laws applicable" Kohl v. United States, 91 U.S. 367).

This case arise out the state court, lacking jurisdiction for service of

summons, as the complaint (CT1-4) fails to state a cause of action to support the use of a 5-day summons - (1) lack jurisdiction over the subject matter (Art. I, Sec. 8, cl. 17) (CT24-26); and (2) respondent McDonald has no "standing to sue" as the real party in interest (CCP §367) and 1161(5). (CT28-63)

Furthermore, the case arise out of the service of a "functus officio" summons, as the summons had been returned and filed on June 1, 1995 (CT5-7). The summons that was served on Aug. 14, 1995, had expired 2 months earlier being used on a prior "gutter service".

Thus, for all the reasons stated, this case presents precisely the appropriate circumstances to grant a petition for Writ of Certiorari, and should be granted.

NATURE OF THE CASE AND PROCEDURAL HISTORY

A. Introduction

The complaint allegations (CT1-4) are based upon events and omissions giving rise to the claims that occurred on a military reservation that relate to an aircraft hangar, located on a portion of that land. (CT137-138)

B. Background History of Hayward Army Airfield, a Military Reservation.

The United State of America filed on Sept. 4, 1942, case entitled, U.S. v. 711.57 Acres of Land in Eden Township, Alameda County, Cal., no. 22294-G (CT102-135), a condemnation proceedings under (40 U.S.C. §258a) to condemn 711.57 acres of land in Eden Township, County of Alameda, State of California, under the authority, and thereafter an order for immediate possession was entered. (See, U.S. v. 711.57 Acres of Land In Eden Township, et al., 51 Fed. Supp. 30, 31).

On Aug. 16, 1944, the U.S. gave written notice to Governor Warren that the U.S. accepts "exclusive federal jurisdiction" over said land within the State of Calif. acquired by it for military purposes, which states in pertinent part the following (A16-17) (CT136-138):

> Accordingly, notice is hereby given that the United States accepts exclusive jurisdiction over all lands acquired by it for military purposes within the State of California, title to which has vested in the United States and over which exclusive jurisdiction has not heretofore been obtained. (Emphasis added.)

On Aug. 21, 1944, governor Earl Warren acknowledge receipt of notice that the

U.S. of America had "exclusive federal jurisdiction" over federal land, located at Hayward, California, and so noted on bottom said letter.

C. City was granted a license, under terms and conditions, which is revocable at any time by the federal government.

On Feb. 8, 1946, the City was granted a interm license to use, maintain and operate the landing area and airport facilities at Hayward Army Air Field under covenants, provisions, reservations, restrictions, and conditions, but "revocable at any time" by the federal government. (CT142-156)

The WAA on Jan. 3, 1947, gave "Notice of Availablity - Government Owned Surplus Airport Property", and thereafter the City on Jan 8, 1947, submitted an "Application for Airport Property" that stated in pertain part as follows:

Terms and Conditions

> 1. This Application . . ., shall constitute the entire contract between the Application and the Administration, unless modified in writing signed by both parties.
>
> * * * * * * * * * * *
>
> 4. Transfer of property shall be . . . without warranty, express or implied,

> and shall contain covenants running with the land for the observance by the transferee of the following reservations, restrictions and conditions; . . . .
>
> * * * * * * * * * * *
>
> 4(D)(1). That upon breach of any of the reservations or restrictions by the transferee . . ., . . ., the title, right of possession and all other rights transferred to the transferee, . . ., shall . . . revert to the Government upon demand . . . .
>
> * * * * * * * * * * *
>
> (b) [T]itle to the additions or improvements . . . shall at all times remain in the Government . . . .

On Jan. 8, 1947, in support of application the City pasted Res. No. 1727 N.S. that stated the following:

> BE IT FURTHER RESOLVED that the City of Hayward, a municipal corporation, hereby agrees to accept the said Hayward Army Air Field, and the said airport property subject to the following reservations, restrictions and conditions:

On Jan. 30, 1947, WAA, gave notice of acceptance of the application and the proprosal from the City. On Apr. 14, 1947, the City passed Res. No. 1763 N.S. that stated "[S]aid City of Hayward shall be and is bound by the terms and conditions set forth in any and all such instruments, ..." On Apr. 16, 1947, a license (aka Quitclaim Deed) was signed

and delivered that stated in pertain part the following: (CT157-165)

> By acceptance of this Deed the said GRANTEE, . . ., agrees to the following reservations and restrictions which shall run with the land, imposed pursuant to the authority of Article 4, Section 3, Clause 2 of the Constitution of the United States of America, the Surplus Property Act of 1944, as amended, Executive Order 9689 and applicable rules, regulations and order:
>
> * * * * * * * * * * * *
>
> C. [T]he GRANTEE further agrees . . . upon the breach of any of the reservations, restrictions, . . ., the title, right of possession or other right transferred, or any portion thereof, shall . . . revert to the GRANTOR upon demand.

On Sept. 27, 1948, Department of the Army, the owning agency, produced a ownership map, one year later, after the license (aka Quitclaim Deed) was approved showing the meters and bounds description of the military reservation that is owned by the federal government. ("Proj. ownership map", Sept 27, 1948, (CT139-141)

D. <u>Hayward Air Terminal recieves federal funds.</u>

From Oct. 28, 1946, and to the present date the City has requested federal funds for said airfield, and entered into written assurances with the U.S. being in

the amount of $3,942,569.05 under the (1) Federal Airport Act of 1946 ("FAAP"); (2) Federal Airport and Airway Development and Revenue Act of 1970 ("ADAP"); Airport and Airway Improvement Act of 1982 ("AIP") (CT69-89).

E. Aviation Site Lease with C.W. Misener and/or Lorene Misener dba Aircraft Modification and Repair.

On May 1, 1965, the City entered into a "Commercial Aviation Site Lease" with C.W. Misener and/or Lorene Misner dba Aircraft Modification and Repair at said address (20995 Skywest Drive, Hayward, Calif.), from May 1, 1965 to June 30, 2013 (CT28-63).

Petitioner Wood took possesion under the above site lease on Aug. 1991, as a purchaser under contract of said lease with payments of $129,500, and is currently in possession of the premises.

F. Proceedings in the Lower Courts.

On Apr. 6, 1995, respondent McDonald filed a form complaint against petitioner Wood under CCP §1161 without any lease or

document showing he is leasing said property in his name. (CT1-4)

Defendant made a special appearance, and filed a Motion to Quash under CCP §418.10(a)(1) being denied on May 11, 1995. (CT8-22) A writ of mandate was filed, and counsel admitted to the court that the service was defective, and reserved the petitioner with a "functus officio" summons in open court, and stated to Judge Sabraw, on Aug. 14, 1995 the following (Rt. 9:5-11):

> THE COURT: You mean you -- you want to stand on the service --
>
> MS. HOWELL: The service today.
>
> THE COURT: -- that was effected today? So you're prepared to allow the petition to be granted vacating the order of the municipal court?
>
> MS. HOWELL: Yes, as to that matter.

Prior to the statements, made above counsel Ms. Howell purportly served the petitioner in open court, who had made a special appearance at the hearing on a Writ of Mandate to Quash Service that shows the following (Rt. 7:2-12):

> MR. WOOD: Your Honor, will the record reflect that the summons that was handed to me is a blank summons, nothing on it?

MS. HOWELL: May I see it, Mr. -- Mr. Wood?

MR. WOOD: When was it issued, counselor?

MS. HOWELL: April 6th.

The summons that was issued on Apr. 6, 1995, was returned to the trial court with proof of service and filed on June 1, 1995. The copy was a "functus officio" summons being already return and filed (CT5-7).

On Aug. 21, 1995, a motion to quash summons and a request for the court to take judical notice was filed in the trial court raising: (1) Service of a "functus officio" summons was used to acquire personal jurisdiction; (2) Immunity rule for service of process, while making a "special appearance"; (3) The action fails to state a cause of action for unlawful detainer, and does not support the use of a 5-day summons (based upon: (a) Lack of Subject Matter Jurisdiction; (b) Lack of Standing to Sue). Petitioner requested the court to take judicial notice under Evid. Code §§451(a), 452(a), (d), (g), and §453 insupport of his motion showing that the (1) federal district court has "exclusive federal jurisdiction", and that

(2) respondent McDonald has no "standing to sue". The court denied the motion, on Sept. 1, 1995. (A7-8) (CT8-22).

A writ of mandate was filed in Sup. Ct. as allowed under CCP §418.10(c), but was summarily denied by the trial court by order filed on Oct. 20, 1995 (A4-5), an judgment was filed on Oct. 27, 1995. (A3)

On Oct. 30, 1995, a petition for writ of mandate was filed in the Court of Appeal under CCP §418.10(c), but summarily denied above on Nov. 14, 1995. (A2); and thereafter, on Nov. 27, 1995, a petition for review was filed being summarily denied on Jan. 23, 1996. (A1)

REASONS FOR GRANTING THE WRIT

A. This case presents important federal questions of great importance that conflict with another state court holdings and the federal courts, and the state court has departured from the accepted and usual course of judicial proceedings.

The summons and the service of the summons is void under the Constitution, and the petitioner may file a motion to quash summons for lack of jurisdiction of

the court over the petitioner. CCP §418.10; Schering v. Superior Court (1975) 52 CA3d 737. The motion has been held to be the mechanism by which petitioner can test whether a complaint states a cause of action for unlawful detainer, and thereby supports a five-day summons being a shorter time than a thirty-day summons. Smith v. Municipal Court (1988) 202 CA3d 685, 688; Delta Imports, Inc. v. Municipal Court (1983) 146 CA3d 1033. The California legislature intended that the statutes on service "be strictly construed". Bishop v. Silva (1991) 234 CA3d 1317. If service of process is defective, the court does not acquire personal jurisdiction over the defendant, and a motion to quash should be granted. Sternbeck v. Buck (1975) 148 CA2d 829, 834. The service is defective, and a "special appearance" is made on his motion to quash summons. CCP §418.10(d) The summons is insufficient to give the court personal jurisdiction over the defendant. Beck v. Ransome-Crommery Co. (1919) 42 CA 674, 679; Armstrong v. Superior Court (1956) 144 CA2d 420, 424.

The action was brought as an unlawful detainer, but the complaint does not state

a cause of action for unlawful detainer, then motion to quash is required to be granted. Delta Imports, Inc. Municipal Court (1983) 146 CA3d 1033, the court held that, if a 5-day summons is based on a complaint that fails to state a cause of action in unlawful detainer, a motion to quash must be granted (146 CA3d at 1036). The court in Delta stated:

> A motion to quash service is the only method by which the defendant can test whether the complaint states a cause of action for unlawful detainer and, thereby, supports a 5-day summons. A general demurrer only tests whether the complaint states a cause of action even if it is on a theory other than unlawful detainer. (Emphasis added.)

Delta's holding was noted by the Calif. Sup. Ct. in Greener v. WCAB (1993) 6 C4th 1028, and stated that "[t]he only situation in which a motion to quash service of summons has been approved as a procedure by which to challenge the sufficiency of the complaint is in unlawful detainer."

1. Personal jurisdiction and due process rights are not disretionary matters

In each instance where a court finds that personal jurisdiction is lacking, a

writ of mandate has been issued to quash service of summons. Javorek v. Superior Court, 17 Cal.3d 629 (1976); Ruger v. Superior Court, 118 Cal.App.3d 427 (1981); Nevada National Bank v. Superior Court, 45 Cal.App.3d 966 (1975); Sheard v. Superior Court, 40 Cal.App.3d 207 (1974). Personal jurisdiction and due process rights are not discretionary matters. Where the summons is substantially defective, as it is in this case, the respondent court did not acquire jurisdiction over the petitioner herein, and its service must be quashed.

The legislature has recognized the importance of an early determination on the issue of personal jurisdiction and enacted CCP §418.10 et seq. to provide an expedited review by petition for writ of mandate of any denial of a motion to quash summons. The legislative enactment of CCP §§418.10 et. seq. further underscores the fact that personal jurisdiction and due process rights are not discretionary matters.

B. Returned of summons is "functus officio", and service of a copy is "void" and may be quash upon motion.

The original summons was returned with proof of service and filed on June 1, 1995 with trial court (CT5-7), and showed service took place, prior to, and thereafter, became "functus officio" for all purposes whatsoever, except to constitute a part of the roll or record in the case. The Calif. Sup. Ct. landmark case Fanning v. Foley (1893) 99 Cal. 336, held that "a returned summons is 'functus officio' and the service of it cannot be made thereafter being returned. In the Mississippi Supreme Court case Riley v. State (1948) 37 So.2d 768, the court pointed out that functous officio literally means "having discharged its duty" and becomes of no further force or authority, and held that liquor seized in a second search after the first search completed under the same warrant inadmissible in prosecution for second offense of possession of inticating liquor. At pg. 769, the court held "The power of the search warrant had become exhausted. It had served it purpose. The

search warrant was functus officio under the circumstances."

The summons issued on Apr. 6, 1995, had been returned to the court with proof service and filed showing service had taken place by posting and mailing pursuant CCP §415.45 on Apr. 19, 1995 (Ct 5-7). A copy was served in open court on Aug. 14, 1995, on the petitioner that was "functus officio" making the service "void". (CT5-7)

C. Defendant has Immunity to make a "Special Appearance" before and after the actual time of the Proceeding at the Court House.

The petitioner made a "special appearance" to quash the summons under the equal protection clause of the 14th Amend, and had immunity from service that lasts for "reasonable time" before and after the actual time of the proceeding on the motion to quash or on the hearing of the writ of mandate under CCP §418.10(c). (See, United States v. Rausher (1886) 119 US 407, 430). The service of a copy being a "functus officio" summons was invalid. (Wyman v. Newhouse (2nd Cir. 1937) 93 F2d 313).

D. A Question of Jurisdiction

It is primarily a question of jurisdiction. Art. I, Sec. 8, cl. 17, of the Constitution of the United States specifies the powers of congress.

> The Congress shall have the power; . . . to exercise exclusive legislation in all cases whatsoever, . . ., and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the errection of forts, ... (Emphasis added.)

As the federal district court has "exclusive federal jurisdiction" under Art. I, Sec. 8, cl. 17, of the Const. of the U.S. over all places purchased. (See, United States v. Tully, 140 Fed. 899 - The phrase "exclusive legislation" has been held to mean "exclusive jurisdiction.")

Chief Justice Stone, while Attorney General, amplified this constitutional concept in 34 Ops. Atty. Gen. 320, 322 (1924) stating:

> It follows, then, that property once acquired by the Government may not be sold, or title otherwise disposed of, except under the authority of Congress, and in the manner provided by law, and this prohibition extends to any attempt to alienate a part of the property, or in general, in any manner to limit or restrict the full and exclusive ownership of the United States . . .. (Emphasis added.)

The federal government acquired the land for military purposes and as an air field, and thereafter said property to the present date has been used for military purposes and as an air field.

The method by which the federal government acquired the areas has been considered the controlling factor in determining the answer to the question. The land may be obtained by purchase from the states with the consent of the state legislature either by direct purchase or under the power of eminent domain. Kohl v. United States, 91 U.S. 367 (1876). The federal government's jurisdiction over areas acquired according to the constitution provision, it has been held that the Congressional power of "exclusive jurisdiction." Western Union Telegraph Co. v. Chiles, 214 U.S. 274 (1909); Utah Power & Light Co. v. United States, 243 U.S. 389 (1917); United States v. Unzeuta, 281 U.S. 138 (1930). Furthermore, Congress alone has the power to punish crimes commited within the ceded territory [Battle v. United States, 209 U.S. 36 (1908); Johnson v. Yellow Cab Co., 321 U.S. 383 (1944); Bowen v. Johnson, 306 U.S. 19 (1939). The U.S. of America owns the land involved in

this action. Congress has full power to provide the terms and conditions upon which the these lands may be acquired, and punish those committing acts calculated to seriously impede or interfere with those conditions and regulations. Const., Art. IV, Sect. 3, cl. 2; U.S. v. Gratiot et al., 14 Pet. 526 (1840); Utah Power & Light Co. v. U.S. 39 (1916); Camifield v. U.S. 167 U.S. 518 (1896). The events or ommissions giving rise to the claims that occured involved lands that are in the public domain. Under Art. IV, Sec. 3, cl. 2, of the Const. of the U.S., "the power over the public land thus entrusted to Congress is without limitations". United States v. San Francisco, 310 U.S. 11, 29 (1939). Congress has both legislative and proprietary powers with respect to the public domain [Sinclair v. United States, 279 U.S. 263, 297 (1928)], and "can prohibit absolutely or fix the terms on which its property may be used". Light v. United States, 222 U.S. 523, 536 (1910). To provide for the use of the governments lands by the public, Congress has enacted statutes confering upon executive officers power to handle the administrative details, and to prescribe rules and

regulations governing the use of the lands in the various localities in order to carry out and fulfill the purposes of the statutes. Such authorizations are not unlawful delegations of legislative power, but amount merely to a conferring of administrative functions upon the executive branch. United States v. Grimaud, 220 U.S. 506, 517 (1896), Hampton, Jr., & Co. v. United States, 276 U.S. 394, 406, 407 (1927).

1. Exclusive Federal Jurisdiction as a military reservation.

The United States has "exclusive federal jurisdiction" under Art. I, Sec. 8, cl. 17 as a military reservation, and under the Surplus Property Act of 1944, section 26(c) - District Court of the United States have full power and jurisdiction to hear, try, and determine such suit; and is also preempted under federal law as the airfield receives federal funds, which gives the federal courts jurisdiction. The land is under the utlimate control of the federal government ready for use when needed for military purposes for which it was dedicated. See, Humble Pipe Line Co.

Waggonner, 376 U.S. 369 (1964); Benson v. United States, 146 U.S. 325 (1892).

In Benson v. United States, 146 U.S. 325, 331 (1892) upheld the jurisdiction of the U.S. to try a person charged with murder on a military reservation, and that the particular place on which the murder was committed was used solely for farming. See, Arlington Hotel Co. v. Fant, 278 U.S. 439 (statute enacted after was held not to be of any effect, because the land was within the "exclusive federal jurisdiction" of the U.S.); U.S. v. Unzenta, 281 U.S. 138 (exclusive jurisdiction); Battle v. U.S., 209 U.S. 36 (jurisdiction of U.S. Court); Western Union Tel. Co. v. Chiles, 214 U.S. 274 (Congress possess exclusive legislative power); Webb v. J.G. White Engineering Corporation, 204 Ala. 429 (Alabama Supreme Court holding "property was under the 'exclusive jurisdiction' of Congress").

2. City of Hayward was granted a license, which is revocable at any time by the federal government.

From Feb. 8, 1946, to the present date, the City was granted a licenses to "use,

maintain and operate the landing area and airport facilities" at Hayward Army Air Field and in consideration of the covenants, provisions, reservations, restrictions, and conditions, but "revocable at any time" by the federal government. The government's restricted transfer to nonfederal hands "was not a relinquishment of the exclusive federal legislative power". S.R.A., Inc. v. Minnesota, 327 U.S. 558, 564. Furthermore, the license (aka quitclaim deed) is not a "grant of real property", and the presumption that a fee simple title is intended to pass is not applicable [Winchell v. Lambert (1956) 146 Cal.App.2d 575, 579], and does not purport to grant an estate inheritance of a fee simple, no covenants are implied when a quitclaim deed is used, even if the word "grant" appears in the deed [Southern Pac. Co. v. Dore (1917) 34 Cal.App. 521, 522-523].

3. Preemption by Federal Law

The U.S. Const. declares federal law, when compatible therewith, to be the supreme law of the land. U.S. Const., Art. VI, cl.2, and states that "interfere

with, or are contrary to the laws of congress, made in pursuance of the contruction" are invalid. Gibbons v. Ogden, 9 Wheat. 1, 211 (1824).

This is a case in which the government, in its sovereign capacity, deals with property which it owns. Its contracts relating to such property stem from ownership, and the manner is governed by specific statute. There is, therefore, no room for the application of any state law (See, United States v. Allegheny County 322 U.S. 174, 182 (1944).

4. Subject matter jurisdiction, is the most important of the jurisdictional doctrines.

If the trial court had no jurisdiction over the subject matter of the cause of action, and federal courts have "exclusive federal jurisdiction" supports a general demurrer (CCP §430.10(a), and the complaint does not state facts sufficient to constitute a cause of action (CCP §430.10(e)), (See, Miller v. R.K.A. Management Corp (1973) 99 Cal.App.3d 460. In addition, the demurrer is to be sustained and when such defense appears from matters of which the court may or

must take judicial notice. (CCP §430.30(a); Javor v. State Board of Equalization, 12 Cal.3d 790, 796.

Here, congress has so completely preempt a particular area, that any civil complaint raising this select group of claims is necessarily federal in character and exclusive federal jurisdiction is vested in the federal courts [see Metropolitan Life Ins. Co. v. Taylor (1987) 481 U.S. 58, 63; The Moses Taylor v. Wilson Hammons (1867) 4 Wall. 411, 429.

5. Standing to sue is an important jurisdiction doctrines.

The courts are under an obligation to examine their subject matter jurisdiction, and standing is important of (the jurisdictional) doctrines. The court in the holding of Allen v. Wright, 468 U.S. 737, 750 stated:

> And if the record discloses that the lower court was without jurisdiction this court will notice the defect, although the parties make no contention concerning it. (citations ommitted).

It is a long-settled principle that standing cannot be "inferred argumentatively from averments in the pleadings," Grace v. American Central Ins.

Co., but rather "must affirmatively appear in the record." Mansfield C. & L.M.R. Co. v. Swan, 11 U.S. 379, 382 (1984). And it is the burden of the "party who seeks the exercise of jurisdiction in his favor," McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 189 (1936), "clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute." Warth v. Seldin, 422 U.S. 490, 518 (1975). Thus, respondent McDonald in this case must "allege . . . facts essential to show jurisdiction. If [he] fail[s] to make the necessary allegations, [he has] no standing." McNutt, supra. 298 U.S., at 189.

6. General Demurrer

A "general demurrer" to a complaint on the ground, challeges pleading that fails to state a cause of action [CCP §430.10(e)].

Jurisdictional objection may be raised by general demurrer, that lack's subject matter jurisdiction [CCP §§430.10(a), 430.30(a)]. Respondent must be the real party in interest (CCP §367 ("Every action must be prosecuted in the name of the real party in interest, except as otherwise

provided * * * by statute."), and a general demurrer is allowed under (CCP §§430.10(e) and (f). Otherwise, the respondent has no standing to sue even though respondent has the (legal capacity to sue). Friendly Village Community Ass'n No. IV v. Silva & Hill Const. Co (1973) 31 CA3d 220. Only the successor in estate is allowed to bring an action. (CCP §1161(5).

A complaint that states a cause of action in a person other than plaintiff, that does not state a cause of action in plaintiff, is subject to a general demurrer (Klopstock v. Superior Court (1941) 17 Cal.2d 13, 19).

A demurrer may be made whenever it appears from the pleading or any matter the court is required to take judicial notice [CCP §430.30(a); Ascherman v. General Reinsuance Corp. (1986) 183 Cal.App.3d 307, 310 n.4(judicial notice)]; and matters noticed may be read into the complaint in determining its sufficiency to state a cause of action [See, E.H. Morrill Co. v. State of California (1967) 65 Cal.2d 787, 795].

CONCLUSION

For these reasons, a writ of certiorari should be granted to review the order of the Court of Appeals, First Appellate District, and request that the Court overrule the decision of the court below.

Respectfully submitted,

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(Attorney of record)
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Attorney for Petitioner
In Propria Persona

A P P E N D I X

Order of the California Supreme Court
Filed January 23, 1996

California Supreme Court No. S050232
(First Appellate District,
Division: 4, No. A072029)

IN THE SUPREME COURT OF CALILFORNIA

MICHAEL R. WOOD, Petitioner,

v.

ALAMEDA COUNTY SUPERIOR COURT, Respondent,

DENNIS MCDONALD, Real Party In Interest.

Petition for review DENIED.

LUCAS

Chief Justice

Order of the Court of Appeal
of the State of California,

First Appellate District, Division: 4

Filed November 14, 1995

Court of Appeal No. A072029
(Alameda County Superior Court,
No. H-186049-2)

WOODS, MICHAEL R.

vs.

SUPERIOR COURT, ALAMEDA COUNTY,
MCDONALD, DENNIS

BY THE COURT:

The petition for writ of mandate is denied.

The justices participating in this matter were:

Anderson, P.J., Poche, J., Reardon, J.

Dated: November 14, 1995

Anderson, P.J.

Presiding Judge

Judgment of the Superior Court
of California, County of Alameda

Filed October 27, 1995

Alameda County Superior Court
No. H-186049-2
(Alameda County Municipal Court
No. 458166)

MICHAEL R. WOODS,
Petitioner,

vs.

MUNICIPAL COURT, ALAMEDA COUNTY,
Respondent,

DENNIS MCDONALD,
Real Party in Interest.

The court having on October 4, 1995, granted the motion of reeal party in interest DENNIS McDONALD for dismissal of the petition for writ of mandate in the above matter and having granted the request of real party in interest for sanctions against petitioner:

IT IS HEREBY ADJUDGED, the petition for writ of mandate is dismissed. Real Party

in Interest DENNIS McDONALD shall have and recover the sum of $850.00 from petitioner under CCP §128.5.

Dated: October 27, 1995.

Ronald M. Sabraw, Judge

Judge of the Superior Court

Order of the Superior Court of California,
County of Alameda

Filed October 20, 1995

Alameda County Superior Court
No. H-186049-2
(Alameda County Municipal Court
No. 458166)

MICHAEL R. WOODS,
Petitioner,

vs.

MUNICIPAL COURT, ALAMEDA COUNTY,
Respondent,

DENNIS MCDONALD,
Real Party in Interest.

This matter came on regularly for hearing on October 4, 1995, before this court. Real party in interest DENNIS McDONALD appear by Laurie Howell. Petitioner MICHAEL R. WOOD appeared In Pro Per.

The court having considered the petition, the answer thereto and the papers filed in support of and opposition to real party's motion to dismiss the petition, heard the argument presented, and good cause appearing:

IT IS ORDERED, the petition for writ of mandate is hereby denied/dismissed. The stay of proceedings under CCP §418.10 is hereby dissolved and the matter is ordered remanded to the Municipal Court.

IT IS FURTHER ORDERED, petitioner shall pay, as sanctions under CCP §128.5, the sum of $850.00 to real party in interest.
Dated: October 20, 1995.

Ronald M. Sabraw, Judge

Judge of the Superior Court

Order of the Municipal Court
of the State of California,

Alameda County, San Leandro-Hayward
Judicial District

Filed September 1, 1995

Alameda County Municipal Court
No. 458166

DENNIS McDONALD, Plaintiff,

vs.

MICHAEL R. WOODS, Defendant.

The motion of the above-named defendant, who appeard specially only, for an order quashing service of the summons came on regularly for hearing on August 28, 1995, in Department Four of the above-entitled court, the Honorable Leo Dorado appearing. Plaintiff appeared by attorney Dianne L. Silva and defendant Michael R. Wood, having submitted a "Notice of Non-Appearance," did not appear.

Having read and considered the supporting declarations, proof of service and points and authorities and having heard and considered the arguments of counsel, the court finds that:

1. The service of the summons and

complaint on defendant August 14, 1995, was not a functus officio summons;

2. The immunity rule for service of process does not apply to defendant in this action;

3. The unlawful detainer does state a cause of action;

4. The use of a five day summons does not violate Due Process or Equal Protection of the law under the Fourteenth Amendment.

5. The court does have jurisdiction over this matter, there having been no transfer to Superior Court on defendant's petition for Writ of Mandate.

The court is satisfied that the court has jurisdiction over the person of the defendant and the subject matter of this action. Therefore,

IT IS ORDERED that defendant's motion is denied and that defendant has five (5) days to file an answer to the complaint.

Dated: September 1, 1995

Leo Dorado, Judge

_____

Judge of the Municipal Court

CONSTITUTIONAL, STATUTES, AND REGULATIONS PROVISIONS AT ISSUE

United States Constitution, Article I, Section 8, clause 17 (Legislative Department, Seat of Government) as follows:

> The Congress shall have power * * * To exercise exclusive Legislation in all Cases whatsoever, . . ., and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Errection of Forts, ... (Emphasis added.)

United States Constitution, Article 4, Section 3, Clause 2 (States Relations, Property of United States) as follows:

> The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting . . . Property belonging to the United States; . . ..

United States Constitution, Article 6, Clause 2 (National Supremacy) as follows:

> Clause 2. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . .; and the Judges in every State shall be bound thereby; any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

United States Constitution, Fifth Amendment (Rights of Person) as folows:

> No person shall . . . be deprived of life, liberty, or property, without due process of law;

United States Constitution, Fourtheenth Amendment, Section 1 (Rights Guaranteed - Due Process and Equal Protection) as follows:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process within it jurisdiction the equal protection of the laws.

Surplus Property Act of 1944, Section 26(c) as follows:

(c) [D]istrict courts of the United States, . . ., within whose jurisdiction limits the limits the person, or persons, doing or committing such act, or any one of them, resides or shall be found, shall wheresoever such act may have been done or committed, have full power and jurisdiction to hear, try, and determine such suit.

War Assets Admistration, Regulation No. 16 (Surplus Airport Property) (32 CFR, 1946 Supp. §§8316.10(a), (b)(1); §§8316.21(a), (1)) as follows:

§8316.10 Restrictions on use.

(a) Use by the Transferee. (1) That the airport shall be used for public airport purposes on reasonable terms and without unjust discrimination and without grant or exercise of any exclusive right for use of the airport within the meaning of section 303 of the Civil Aeronautics Act of 1938 (52 State. 986; 49 U.S.C. 453).

* * * * * * * * * * *

(b) Use by the Government. (1) That the Government shall at all times have the right to use the airport in common with others; Provided, however, that such use . . . does not restrict Government use to less than twenty-five (25) per centum of capacity of the airport.

* * * * * * * * * * *

§8316.21(a) Intruments of transfer.

(a) Conditions. Any deed, lease, or other instrument executed to transfer airport property . . ., containing reservations, restrictions, or conditions, shall contain provisions in effect:

(1) That upon a breach of any of the reservations, restrictions, or conditions by the . . . transferee, the title, right of possession, or other right transferred shall . . . revert to the Government upon demand;

CALIFORNIA STATUTES INVOLVED

California Code of Civil Procedure, Section 367 (Real Party in interest; prosecution in party's) states:

> Every action must be prosecuted in the name of the real party in interest, except as otherwise provided * * * by statute.

California Code of Civil Procedure, Section 418.10 et seq. (Motion to Quash service of summons or to stay or dismiss action; procedure states:

> (a) A defendant, on or before the last day of his or her time to plead or within any further time that the court may for good cause allow, may serve and file a notice of motion * * * for one or more of the following purposes:
>
> (1) To quash service of summons on the ground of lack of jurisdiction of the court over him or her.

* * * * * * * * * * *

(b) The notice shall designate, as thime for making the motion, a date not more than 30 days after filing of the notice. The notice shall be served in the same manner, and at the same time, prescribed by subdivision (b) of Section 1005. The service and filing of the notice shall extend the defendant's time to plead until 15 days after service upon him or her of a written notice of entry of an order denying his or her motion, except that for good cause shown the court may extend the defendant's time to plead for an additional period not exceeding 20 days.

(c) If the motion to quash is denied by the trial court, the defendant, . . ., and before pleading, may petition an appropriate reviewing court for a writ of mandate to require the trial court to enter its order quashing the service of summons . . . or dismissing the action.

(d) No default may be entered against the defendant before expiration of his or her time to plead, and not motion under this section, or under Section 473 or 473.5 when joined with a motion under this section, or application to the court or stipulation of the parties for

an extension of the time to plead, shall be deemed a general appearance by the defendant.

California Code of Civil Procedure, Section 1161(5): Failure to quit after notice.

(5) Failure to Quit after notice. When he gives written notice . . ., but fails to deliver up possession at the time specified in said written notice, . . ., or the successor in estate of the landlord, if any there be.

(Letter from War Department)

W a r D e p a r t m e n t

Washington, D.C.

August 16, 1944

Dear Governor Warren:

The laws of the State of California (Section 33 of the Political Code of California, and Section 34 of said code as amended by an act of the legislature of California approved July 5, 1939 (Cal. Stat., 1939, Chap. 710, p. 2231) permit the assumption of exclusive federal jurisdiction over lands within that State acquired by the United States for military and certain other purposes.

Under Section 355, Revised Statutes, as amended by the act of February 1, 1940 (54 Stat. 19), and by the act of October 9, 1940 (54 Stat. 1083; 40 U.S.C. 255), it is provided in effect that unless and until the United States has accepted jurisdiction over lands acquired or in which an interest shall have been acquired after February 1, 1940, it shall be conclusively presumed that no such jurisdiction has been accepted.

Accordingly, notice is hereby given that

the United States accepts exclusive jurisdiction over all lands acquired by it for military purposes within the State of California, title to which has vested in the United States and over which exclusive jurisdiction has not heretofore been obtained. (Emphasis added.)

Information is being assembled to assist you in complying with an act of the legislature of California approved May 17, 1943 (Cal. Stat., 1943, Chap. 536), and will be forwarded under separate cover.

Return of the duplicate copy of this letter, with your indorsement thereon designating time of receipt of this acceptance by your office, would be appreciated.

Sincerely yours,
(signed: Joe J. McCloy)
Acting Secretary of War

The original of this letter was received at the Governor's Office, Sacramento, California, on August 21, 1944.

(signed: Earl Warren)
Governor

(2)

Supreme Court, U.S.
FILED
MAY 20 1996
CLERK

No. 95-1703

In The

Supreme Court of the United States

October Term, 1995

MICHAEL R. WOOD,

Petitioner,

v.

ALAMEDA COUNTY SUPERIOR COURT,
DENNIS McDONALD,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeal Of The State Of California, First Appellate District

RESPONDENT DENNIS McDONALD'S BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION

In his Petition for Writ of Certiorari (hereinafter "Petition") petitioner Michael R. Wood (hereinafter "Wood") seeks review of denial of a petition for writ of mandate sought from the First Appellate District of the Court of Appeal of the State of California (see, Petitioner's Appendix, A2).[1] The petition to the Court of Appeal followed entry of dismissal by the Alameda County Superior Court or a petition for writ of mandate filed by Wood after denial of a motion to quash service in an action brought by Respondent Dennis McDonald (hereinafter "McDonald") in the Alameda County Municipal Court (Ptr. App. A3-A6, A7-A8).

McDonald filed the action in the Municipal Court in April, 1995 to recover possession, under California's unlawful detainer statutes, of premises rented by him to Wood at the "Hayward Air Terminal" in Hayward, California. After unsuccessfully attempting to personally serve Wood with the summons and complaint, McDonald obtained an order from the Municipal Court to permit service by "posting and mailing" under California Code of Civil Procedure §415.45 (Respondent's Appendix A).[2] Wood responded by filing a motion to quash service under California Code of Civil Procedure §418.10 (Res. App. B). After denial of that motion, Wood filed a petition for writ of mandate in the Alameda County Superior Court. At the hearing in August, 1995, McDonald opted

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[1] Wood's request for review by the California Supreme Court was denied as well. Petitioner's Appendix (Ptr. App.) A1.

[2] Hereinafter "Res. App."

to effect personal service of the Municipal Court summons on Wood (Petition, p. 12). Although the nominal effect was to permit Wood's petition to be granted, the practical reason was simply to try to expedite the unlawful detainer action by rendering moot Wood's claim that he had not been afforded adequate notice by the prior substitute service.

The Municipal Court's denial of the second motion to quash, following personal service of the summons, described above, is the basis for the subsequent proceedings leading to this Petition.

RESPONSE TO STATEMENT OF FACTS

Wood has made several misstatements in his Petition. The facts underlying the alleged controversy over the ownership of the premises and, hence, jurisdiction of the case, are not as Wood claims. (Petition, p. 5). Wood contends, without proof, that the City of Hayward is a mere "licensee" with respect to the premises. Yet, Wood admits the United States conveyed the premises to the City by **deed.** As discussed below, that admission is dispositive of Wood's petition and the alleged federal questions asserted in it.

REASONS FOR DENYING THE WRIT

The Decisions Below Properly Held that the State Court Has Jurisdiction To Hear the Unlawful Detainer Action

In April, 1947, the United States delivered to the City of Hayward a quitclaim deed to the subject premises

(Petition, p. 9). Wood points to no evidence or authority for his assertion that this quitclaim deed, despite its title, was in fact only a "license." Indeed, Wood cites several portions of the deed itself (Petition, p. 10) establishing that a conveyance of title, not a mere license, in fact occurred, the only notable feature being that the title conveyed contained certain reservations and restrictions which, if **violated** by the City, could entitle the United States to reversion of the premises. However, nowhere does Wood refer to any evidence that any such demand for reversion has ever occurred.

A quitclaim deed is as effective as any other deed to transfer all of a grantor's estate, title, right and interest to a grantee. *Buller v. Buller,* 62 Cal.App.2d 687, 698-699; 145 P.2d 653 (1944). A license, on the other hand, conveys no title at all, but merely gives authority to perform an act or acts on property of another. It is personal to the licensee and cannot be conveyed or assigned by him. *O'Shea v. Claude C. Wood Co.,* 97 Cal.App.3d 903, 909, 159 Cal.Rptr. 125 (1979).

Since the City of Hayward, and not the United States, owns the premises, the state courts clearly had subject matter jurisdiction to decide competing claims to possession among the City's lessees. Art. 1, §8, Cl. 17 of the United States Constitution thus does not apply. As pointed out in one case cited by Wood:

> As the purpose of Clause 17 was to give control over the sites of governmental operations to the United States when such control was deemed essential for federal activities, it would seem that the sovereignty of the United States would

> end with the reason for its existence and the disposition of the property.
>
> *S.R.A., Inc. v. Minnesota*, 327 U.S. 558, 564 (1945)

In summary, there simply is no issue of federal jurisdiction.

McDonald submits all of Wood's other claims of error, e.g., the sufficiency of the Municipal Court complaint to state a cause of action for unlawful detainer under California law and the claim that McDonald lacked standing to sue to recover possession, were fully within the jurisdiction of the California court to determine. However, to avoid any possible suggestion of waiver of opposition to the alleged due process claims, McDonald notes the following:

Wood Was Not Served With a Defective Summons

Wood has failed to disclose the existence of case law, applied by the lower courts, that return of the original summons did not preclude subsequent service of a copy of the summons in order to obtain personal jurisdiction over him in the Municipal Court action. Wood cites only an 1893 decision which merely stated, in *dictum*, that once an original summons has been returned it becomes "functus officio," or "without effect." See, *Fanning v. Foley*, 99 Cal. 336 (1893). Wood has repeatedly misconstrued the case, arguing that the return of the original summons to the court after the initial service under the May, 1995 order permitting posting and mailing rendered it impossible thereafter for him to be served in the action. The actual ruling in *Fanning* was simply that returning

the summons did not extend the then-applicable statutory time limitation for service of the summons. See, *Torgerson v. Smith*, 98 Cal.App.3d 948, 951; 159 Cal.Rptr. 781 (1979) (overruled on other grounds in *Johnson & Johnson v. Superior Court*, 38 Ca1.3d 243, 254 fn. 7 (1985)).

The purpose of requiring a return of the summons is simply to notify the court that the plaintiff is complying with applicable time requirements and, further, that the defendant has received notice of the action. Accordingly, it has been held that process statutes are to be liberally construed. Therefore, service made with a copy of the summons rather than the original is effective to acquire personal jurisdiction over the defendant. *Courtney v. Abex Corp.*, 176 Cal.App.3d 343, 347; 221 Cal.Rptr. 770 (1986).

It should be noted that the case cited by Wood in support of his claim, *Wyman v. Newhouse*, 93 F.2d 313 (2nd Cir., 1937) nowhere mentions the term "functus officio summons," or expiration of the effectiveness of a summons after return to the court.

Wood Was Not "Immune" From Service of the Summons

Wood cites the case of *United States v. Rauscher*, 119 U.S. 407 (1886) for the proposition that he was entitled to "immunity" from service of process while appearing in the Superior Court for the hearing on his petition for writ of mandate in August of 1995. *Rauscher* had nothing to do with service of a summons in a civil case, but involved the scope of an extradition treaty between the United States and Great Britain, to wit: whether a defendant, extradited to this country pursuant to the treaty, could legally be subjected to trial on a criminal charge other

than that specified in the treaty or, rather, must he be deemed immune from prosecution on any other charges absent an opportunity to return to the country from which he was taken. It is plainly inapplicable to this case.

CONCLUSION

For the above reasons, the Petition should be denied.

Respectfully submitted,

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Appendix A

§ 415.45. Posting summons in action for unlawful detainer

(a) A summons in an action for unlawful detainer of real property may be served by posting if upon affidavit it appears to the satisfaction of the court in which the action is pending that the party to be served cannot with reasonable diligence be served in any manner specified in this article other than publication and that:

(1) A cause of action exists against the party upon whom service is to be made or he is a necessary or proper party to the action; or

(2) The party to be served has or claims an interest in real property in this state that is subject to the jurisdiction of the court or the relief demanded in the action consists wholly or in part in excluding such party from any interest in such property.

(b) The court shall order the summons to be posted on the premises in a manner most likely to give actual notice to the party to be served and direct that a copy of the summons and of the complaint be forthwith mailed by certified mail to such party at his last known address.

(c) Service of summons in this manner is deemed complete on the 10th day after posting and mailing.

(d) Notwithstanding an order for posting of the summons, a summons may be served in any other manner authorized by this article, except publication, in which event such service shall supersede any posted summons.

Appendix B

§ 418.10. Notice of motion to quash service or to stay or dismiss action; Petition for writ of mandate, and responsive pleading; Default and general appearance

(a) A defendant, on or before the last day of his or her time to plead or within any further time that the court may for good cause allow, may serve and file a notice of motion either or both:

(1) To quash service of summons on the ground of lack of jurisdiction of the court over him or her.

(2) To stay or dismiss the action on the ground of inconvenient forum.

(b) The notice shall designate, as the time for making the motion, a date not more than 30 days after filing of the notice. The notice shall be served in the same manner, and at the same times, prescribed by subdivision (b) of Section 1005. The service and filing of the notice shall extend the defendant's time to plead until 15 days after service upon him or her of a written notice of entry of an order denying his or her motion, except that for good cause shown the court may extend the defendant's time to plead for an additional period not exceeding 20 days.

(c) If the motion is denied by the trial court, the defendant, within 10 days after service upon him or her of a written notice of entry of an order of the court denying his or her motion, or within any further time not exceeding 20 days that the trial court may for good cause allow, and before pleading, may petition an appropriate reviewing court for a writ of mandate to require the trial court to enter its order quashing the service of summons or

staying or dismissing the action. The defendant shall file or enter his or her responsive pleading in the trial court within the time prescribed by subdivision (b) unless, on or before the last day of the defendant's time to plead, he or she serves upon the adverse party and files with the trial court a notice that he or she has petitioned for a writ of mandate. The service and filing of the notice shall extend the defendant's time to plead until 10 days after service upon him or her of a written notice of the final judgment in the mandate proceeding. The time to plead may for good cause shown be extended by the trial court for an additional period not exceeding 20 days.

(d) No default may be entered against the defendant before expiration of his or her time to plead, and no motion under this section, or under Section 473 or 473.5 when joined with a motion under this section, or application to the court or stipulation of the parties for an extension of the time to plead, shall be deemed a general appearance by the defendant.